**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**
**&**
**THE HONOURABLE MRS. JUSTICE K.HEMA**

**MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929**

**Crl.MC.No. 1161 of 2007()**
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**(AGAINST ORDER OF DEPUTY COLLECTOR MALAPPURAM IN P. 4/9084/07 DT.06.03.2007**

**PETITIONER:**
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**ABDUL SAMAD, AGED 30 YEARS,**
**S/O.ALAVI, ACHU KOMBAN VEEDU,**
**PUZHANALLORE P.O., KOOTHILAYADI, KOLATHURE.**

**BY ADV. SMT.RINCI ANTONY.T**
**SMT.LEELA R**
**SRI.SUNIL NAIR PALAKKAT**
**SRI.K.N.ABHILASH**
**SMT.P.K.BEENA**

**RESPONDENTS:**
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**1. STATE OF KERALA,**
**REP.BY THE PUBLIC PROSECUTOR,**
**HIGH COURT OF KERALA, ERNAKULAM.**

**2. DISTRICT COLLECTOR,**
**MALAPPURAM DISTRICT.**

**BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/09/2007, ALONG WITH WPC NO. 9141 OF 2007 WPC NO. 9958 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**J.B.KOSHY & K.HEMA, JJ.**

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W.P.(C) Nos.9141 & 9958 of 2007

&

CRL.M.C.No.1161 OF 2007

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Dated 17th September, 2007

**JUDGMENT**

**Koshy,J.**

These cases were referred to the Division Bench mainly to consider the question regarding the power of the District Collector to confiscate the vehicle involved in illicit transportation of river sand under the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (hereinafter referred to as `the Act'). It is the contention of the petitioners that there is no valid provision conferring jurisdiction on the District Collector to confiscate the vehicle involved in such illicit transportation of river sand and proceedings of confiscation and conditional releasing of the same are all invalid. Already with regard to the mining and transportation of sand, there are ample laws like the Mines and Minerals (Regulation and Development) Act, 1957 and Rules made thereunder. However, in view of the environmental problems created by indiscriminate mining of sand, in addition to the above, this Act was also brought into force by the Legislature. The objects and preamble of the Act read as follows:

> "An Act to protect river banks and river beds from large scale dredging of river sand and to protect their biophysical environment system and regulate the removal of river sand and for matters connected therewith or incidental thereto.
>
> **Preamble**.-WHEREAS it has come to the notice of the Government that indiscriminate and uncontrolled removal of sand from the rivers cause large scale river bank sliding and loss of property;
>
> AND WHEREAS large scale dredging of river sand also disturb the biophysical environment system of the river in different degrees;
>
> AND WHEREAS due to the executive regulatory orders in force, complaints have been received regarding the hardship to the employees engaged in construction works;
>
> AND WHEREAS, in the public interest, it is expedient to provide for regulatory measures for the protection of river banks and removal of sand from rivers;"

It is true that while interpreting the provisions of the Act, if there is any ambiguity or difficulty, intention of legislature etc. have to be gathered from the entire circumstances. The Act was enacted in Malayalam and thereafter it was translated and English translation was also published. Under Article 348(3) of the Constitution of India State Government can pass enactments in a language other than English. Article 348(3) reads as follows:

> "**348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc.**-

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> (3) Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article."

In view of the above provision, in the case of conflicts between the Non-English version and English version, English version will be authoritative text in the English language, but, State Government has power to adopt the language other than English and such text also operates as authoritative text and in case of conflict in English version, non-English version can be referred to as an external aid to interpret. Unlike the acts of Parliament, when Legislature passes the Act in the regional language and later it is translated in English, version in regional language, which was considered in the Legislature assumes more importance. Section 20 of the Act provides for penalty like imprisonment and fine to be imposed for the contravention of the provisions of the Act. Section 24 states that the offences are cognizable and Section 25 provides who is authorised to file complaint

etc. It is also stated that the penalty provided under other enactments are not barred. Apart from the imposition of penalty like imposition of fine and imprisonment, another power is given under Section 23. Section 23 Malayalam version reads as follows:

> "23. വാഹനങ്ങൾ കണ്ടുകെട്ടൽ .– ഈ ആക്റിലെ വ്യവസ്ഥകൾ പാലിക്കാതെ മണൽ കടത്തുന്ന ഏതൊരാളും ശിക്ഷക്ക് വിധേയനാവുന്നതും കടത്തിക്കൊണ്ടുപോകാൻ ഉപയോഗിച്ച വാഹനം, പോലീസോ റവന്യൂ ഉദ്യോഗസ്ഥന്മാരോ കണ്ടുകെട്ടലിന് വിധേയമാക്കേണ്ടതുമാണ്.
>
> വിശദീകരണം.– ഈ വകുപ്പിലെ ആവശ്യങ്ങൾക്കായി വാഹനം എന്നതിൽ `നാടൻവള്ളവും ചങ്ങാടവും' ഉൾപ്പെടുന്നതുമാകുന്നു."

When English translation was published, instead of the word `confiscation' or 'കണ്ടുകെട്ടൽ ' the word `seizure' was used. Therefore, the contention raised by the petitioners is that the authorised officer, the District Collector, has got the power only to seize the vehicle and not to confiscate the vehicle. A learned Single Judge of this court in **Moosakoya** v. **State of Kerala** (2005 (4) KLT 331) after considering the English version of Section 23 of the Act held that District Collector has no power to confiscate the vehicle. But, the original Malayalam version was not shown to the learned Single Judge. In English version of the Act published in Kerala

Gazette Ex.No.285 dtd. 20-3-2002, Section 23 reads as follows:

> "23. Confiscation of vehicles.- Whoever transports sand without complying with the provisions of this Act shall be liable to be punished and the vehicle used for the transaction is liable for seizure by the Police or Revenue Officials.
> **Explanation**.- The term `vehicle' for the purpose of this section includes `country boat' and raft."

2. There is apparent difference in the wordings in Malayalam and English versions. Even if the word is `confiscation' as in Malayalam, statutory rules will show that Police Officers or Revenue Officials other than the Collector cannot release the vehicle or sell the vehicle and confiscation of the vehicle cannot be exercised by officers other than Collector. If it is only a power of seizure as in English version, nothing is stated in the Act what one has to do with the seized vehicle and the provisions became purposeless. This shows that the section was drafted in a hurry. Section 23 in Malayalam text passed by the Legislature and English translation need further interpretation. When the words of a statute are clear, plain and unambiguous and capable of one meaning only, the courts are bound to give effect to that meaning irrespective of consequences as held by the Apex Court in **Nelson Motis** v. **Union of India** (AIR 1992 SC 1981). (See also **Union of India** v. **Hansoli Devi** ((2002) 7 SCC 273) and **Nathi Devi** v. **Radha Devi Gupta** ( (2005) 2 SCC

271)). The rule stated by TINDAL, C.J. in **Sussex Peerage Case** (1844) 11 C1 & F85, p.143) is in the following form: "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver". As held by the Apex Court in **Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.** v. **Custodian of Vested Forests** (AIR 1990 SC 1747, p.1752) and **Harbhajan Singh** v. **Press Council of India** (AIR 2002 SC 1351 p. 1354) the intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. Literal or strict interpretation is accepted by the Apex Court in **Promoters & Builders Assn. of Pune** v. **Pune Municipal Corpn. and others** ((2007) 6 SCC 143). As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. This rule like all other rules is subject to exceptions. We have seen that words used in English and Malayalam versions are in conflict and one has to use external aids for interpreting and understanding the intention of the Legislature. As held in **Holmes** v. **Bradfield Rural District Council** (1949) 1 All ER 381, p.384) and **Nasiruddin** v. **State Transport Appellate**

**Tribunal** (AIR 1976 SC 331, p. 338) in selecting out of different interpretations “the court will adopt that which is just reasonable and sensible rather than that which is none of those things” as it may be presumed that the Legislature should have used the word in that interpretation which least offends our sense of justice. As held in **Workmen of Dimakuchi Tea Estate** v. **Management of Dimakuchi Tea Estate** (AIR 1958 SC 353 p. 356) the words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strict grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained. When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words “of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)” is the rule laid down in **Heydon's** case ((1584) 3 Co. Rep. 7a, p.7b). This rule was accepted by the Apex Court in various cases. The rule is also known as `purposive construction' or `mischief rule'. The rule shows that the courts must adopt that construction which “shall suppress the mischief and advance the remedy”. The rule was explained in the

**Bengal Immunity Co.** v. **State of Bihar** (AIR 1955 sc 661, P.674) by S.R.DAS, C.J.I. as follows:

> "It is a sound rule of construction of a statute firmly established in England as far back as 1584 when **Heydon's** case (((1584) 3 Co. Rep. 7a, p.7b) was decided that for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:
>
> 1st – What was the common law before the making of the Act,
>
> 2nd – What was the mischief and defect for which the common law did not provide.
>
> 3rd – What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and
>
> 4th – The true reason of the remedy;
>
> and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico."

In **National Insurance Co. Ltd.** v. **Laxmi Narain Dhut** ((2007) 3 SCC 700) the Apex Court held as follows:

> "32..... `A statute is an edict of the

legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative legislature to forestall (all situations exhaustively) and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for and words chosen to communicate such indefinite referents are bound to be in many cases, lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in

> the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. (See **District Mining Officer** v. **Tata Iron & Steel Co.** ((2001) 7 SCC 358, SCC pp. 382-88, para 18)
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> 33. It is also well settled that to arrive at the intention of the legislation depending on the objects for which the enactment is made, the court can resort to historical, contextual and purposive interpretation leaving textual interpretation aside."
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> It was also opined : (SCC pp.718-19, para 35)
>
> "35. More often than not, literal interpretation of a statute or an provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the courts should keep in mind the objectives or purpose for which statute has been enacted. Justice Frankfurter of the US Supreme Court in an article titled as `Some Reflections on the Reading of Statutes' (47 Columbia Law Review 527), observed that,
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> `legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statutes, as read in the light of other external manifestations of purpose.'"

Those paragraphs were quoted with approval in **Dilip S. Dahanukar** v. **Kotak Mahindra Co. Ltd.** ((2007) 6 SCC 528). To understand the purpose and meaning of Section 23, we have to see the object of the

Act, heading of the section, statutory rules and other provisions of the Act. It is also essential that court has to take a harmonius construction. As held by the Apex Court in **Raj Krushna** v. **Binod Kanungo** (AIR 1954 SC 202) a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid a "a head on clash" between two sections of the same Act and, whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise. In **State of U.P.** v. **Baburam** (AIR 1961 SC 751) it was held that rules made under the statute are treated for the purpose of construction as if they were in the enabling Act and are to be of the same effect as if contained in Act. In **Tata Engineering and Locomotive Company Ltd.** v. **Gram Panchayat, Pimpri Waghere** (AIR 1976 SC 2463 at p.2467) it was held that "rules made under a statute are a legitimate aid to construction of the statute as contemporanea expositio."

3. When a power is given to seize the vehicle involved in the offence, there should be purpose for the same. If the Police or

revenue officials have got any power to seize the vehicle, there should be something to be done after seizure. If mere seizure of the vehicle is concerned and nothing further can be done, seizure became meaningless or purposeless. Apex Court in **Aswini Kumar Ghose** v. **Arabinda Bose** (AIR 1952 SC 369 at p. 377) held as follows:

> ""It is not a sound principle of construction", to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

Apex Court in **Rao Shiv Bahadur Singh** v. **State of U.P.** (AIR 1953 SC 394) observed as follows:

> ""It is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application." "In the interpretation of statutes", observed DAS GUPTA, J.: "the court always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect."

(See also **J.K.Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P.** (AIR 1961 SC 1170 at p.1174). Hence, seizure is to be

effected and what is to be done after seizure is explained in the statutory rules. Section 26 of the Act authorizes Government to frame rules to carry out all or any of the purposes of the Act. Procedures for framing rules are made clear in Section 26 of the Act. Section 26 reads as follows:

> "**26. Power to make rules**.-
>
> (1) The Government may, by notification in the Gazette, make rules to carry out all or any of the purposes of this Act.
>
> (2) Every rule made under this Act shall be laid as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised, in one session or two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rules."

In this connection, we refer to the concerned Rules also. Rule 9 of the Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002 (hereinafter referred to as `the Rules') describes powers and functions of District

Collector. Rule 9(j) reads as follows:

"**9. Powers and Functions of District Collector**.-

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(j) to exercise all powers and perform duties specially entrusted to the District Collector under the Act and other provisions of these Rules."

Rules 27 and 28 read as follows:

**"27. Procedure for confiscation of vehicle.-**

(1) The Police or Revenue officials shall seize the vehicle used for transporting sand in violation of the provisions of the Act and these Rules.

(2) In the case of seizure of vehicle under sub-section (1), a mahazar shall be prepared in the presence of two witnesses regarding the vehicle and one copy of the same shall be given to the person possessing the vehicle at the time of seizure and one copy to the District Collector.

(3) The vehicle may be returned if the owner of the vehicle or the possessor remits an amount towards River Management Fund equal to the price fixed by the District Collector with fine within seven days of seizure.

**28. Sale of the vehicle seized.-**

(1) The District Collector shall consider every objection submitted within seven days of seizure of any vehicle under rule 27 and the decision of District Collector thereon shall be final.

(2) In the case of sale of the vehicle under sub-section (1), if the fine and amount under sub-section (3) of section 27 of these rules has not

been remitted, the District Collector shall sell the vehicle by auction.

(3) The amount received from auction under sub-section (2) shall be credited to the River Management Fund after deducting the expenditure of auction."

The above is the fixed procedure for seizure of the vehicle and sale of the vehicle seized. As soon as revenue officials or Police seize the vehicle, a mahazar has to be prepared and one copy has to be given to the person possessing the vehicle and one copy to the District Collector and the owner of the vehicle or possessor thereof can get the vehicle released on payment of an amount towards River Management Fund which is equal to the price fixed by the District Collector with fine within seven days of seizure. Rule 28 further provides that District Collector can consider every objections submitted within seven days of the seizure and if the amount fixed under sub-rule (3) of Rule 27 is not paid, District Collector can sell the vehicle by auction. Power on the seized vehicle to be sold or released on certain conditions shows that the power is only for confiscation and nothing else. But, it is not an absolute power to confiscate. On seizure, after hearing the objection District Collector is free to fix the amount for releasing the vehicle as provided under Rule 27(3). If the seized vehicle is found not transported illegal sand also Collector can

release it. Under Rule 28(1) District Collector is bound to consider the objection and pass final order. If the amount fixed under Rule 27 (3) is paid, District Collector has no power to retain or continue confiscation proceedings. He is bound to release the vehicle immediately. Only if the amount is not paid within a reasonable time, he can sell the vehicle.

4. A Division Bench of this court in W.A.No.1330 of 2002 also interpreted the provision in Section 23 as power to confiscate. For the Division Bench, Sri.B.N.Srikrishna, Chief Justice (as he then was) observed as follows:

> "Section 23 deals with confiscation of vehicles and provides that whoever transports sand without complying with the provisions of this Act shall be liable to be punished and the vehicle used for the transaction is liable for seizure by the police or Revenue officials. (Unfortunately, the English copy of the Act published in the gazette uses the word `seizure' though the caption of Section 23 is `confiscation of vehicles'. Section 23 in the Malayalam version uses the word `kandukettal', which means `confiscation'. It is time that the State Government looks into the matter of accurate translation of Acts in English for the benefit of the Judges who are required to interpret them in the High Court and whose knowledge in Malayalam may be nil or limited). Rule 27 of the Kerala Protection of River Banks and

> Regulation of Removal of Sand Rules, 2001 (Malayalam version) specifically provides for confiscation of the vehicles. The Rules empower the District Collector to take action for confiscation of the vehicles after following the procedure prescribed therein."

Original Malayalam Act used the word 'കണ്ടുകെട്ടൽ' which means confiscation. The heading given to the section in English also is as follows: "**Confiscation of vehicles**". As stated in Maxwell "the headings prefixed to sections or sets of sections in some modern Statutes are regarded as preambles to those sections. They cannot control the plain words of the Statute, but they may explain ambiguous words". (See: Page 11 of Maxwell on the Interpretation of Statutes – 12th edition). The above sentence was quoted with approval by the Apex Court in **Bhinka and others** v. **Charan Singh** (AIR 1959 SC 960 at page 966). Now, it is settled law that headings or titles prefixed to sections or group of sections can be referred to interpret the Act of legislation, if there is any ambiguity. (**Director of Public Prosecutions** v. **Schildkamo** (1969 (3) All. ER 1640 – House of Lords). Even though heading cannot cut down the plain meaning of the section, in case of doubt or ambiguity, the heading or sub-heading can be looked into. Original Malayalam version, heading of section, statutory rule and totality of the Act show that Police or

revenue officials have power to seize the vehicle and then District Collector can release the vehicle on payment of amount fixed under Sub-rule 3 of Rule 27 or to sell the vehicle by District Collector which means that District Collector has got power to confiscate the vehicle subject to condition to release the same on payment of the amount fixed under Rule 27(3). The court has duty to interpret the provisions in a meaningful way.

5. It was argued that there is no provision for complying with the principles of natural justice and no prescribed procedures are mentioned. We are afraid that such a contention is not possible because officers seizing the vehicle are bound to give copy of the mahazar to the parties concerned and to the Collector and any aggrieved person can file an objection within seven days and Collector is bound to consider the objection before passing orders. Ordinarily, an opportunity of making written representation against the proposed action will meet the requirement of natural justice if affected party is furnished with the information upon which action is issued as held by the Apex Court in **S.L.Kapoor** v. **Jagmohan** (AIR 1981 SC 136), **Union of India** v. **Jyoti Prakash** (AIR 1971 SC 1093). But, reasonable opportunity of hearing in a particular case will depend on circumstances of each case as decided in **Security**

**Guards Board, Bombay & Thana** v. **S. & P. Service Pvt. Ltd.** (AIR 1987 SC 1370 para 9). But, there cannot be any uniform formula or rigid rules.(**Suresh Koshy** v. **University of Kerala** (AIR 1969 SC 198). Since civil rights are affected and no appeal is provided, on the principle of fair procedure and `Audi Alteram Partem' principle, a right of fair hearing should be offered by the Collector before deciding to sell the vehicle as provided under Rule 28. Right of fair hearing is an important principle of natural justice as held in **Ridge** v. **Baldwin** (1964 AC 40). House of Lords in **O' Reilly** v. **Mackman** (1983 AC 276) observed that the right of a man to give "a fair opportunity of hearing what is alleged against him and of presenting his own case is so fundamental to any civilized legal system" (opinion by Lord Diplock at page 276). Similar principles were enunciated by the Hon'ble Supreme Court of India as can be seen from the decision in **M/s.Fedco (P) Ltd. and another** v. **S.N.Bilgrami and others** (AIR 1960 SC 415). As a matter of fact, the Collector before passing the final orders in these cases heard the parties also in compliance with the principles of natural justice as can be seen from the impugned orders. Next contention raised by the petitioners is that no appeal is provided. Merely because appeal is not provided, a provision cannot be said to be illegal or violative of the principles of natural justice. Natural justice does not require that there should be

a right of appeal from any decisions as held in **Ward** v. **Bradford Corporation** ((1971) 70 LGR 27). It is settled law that there is no automatic right of appeal against a statutory authority unless statutes so prescribe as held in **Annamunthodo** v. **Oilfield Workers' Trade Union** ((1961) AC 945). (See also Administrative Law by Sir William Wade 7th Edn. Page 549). There are many statutes which provide for no appeals from the decisions of statutory Tribunals. Certain Acts prescribe appeals only in a substantial question of law. (See Section 30 of the Wormken's Compensation Act). Section 17(2) of the Industrial Disputes Act clearly provides that the award of the Industrial Tribunal or Labour Court shall be final and shall not be called in question by any court in any manner whatsoever. However, notwithstanding the finality declared, in appropriate cases where there is patent illegality, error apparent on the face of records, perverse findings resulting in total failure of justice, violation of fundamental principles of natural justice causing serious prejudice etc. aggrieved party can approach the High Court for judicial review under Article 226 or 227 of the Constitution of India or under Article 32 of the Constitution of India to the Hon'ble Supreme Court. Powers of the Apex Court under Articles 133 and 136 are also unaffected by such finality declaration. It is true that once right of appeal is provided in a statute, it is a substantial right. But, the right of appeal

is a statutory right and not providing an appeal in the statute will not affect the correctness or validity of the statute. In this case, considering the object of the Act, Legislature decided not to provide for an appeal from the decisions of District Collector. Considering the object of the Act, to regulate the environmental problems created by illegal sand mining of the river, the legislature decided not to make the proceedings further appealable. However, in case of arbitrariness or perversity, parties can always approach the court for appropriate relief.

6. Based on the decision of this court in **Rahim** v. **State of Kerala** (2002 (3) KLT 340) it is argued that as soon as the vehicle is seized, report should be filed to the court under Section 102 of the Code of Criminal Procedure. We are afraid that such an interpretation is not possible because what is to be done with the seized vehicle is very clearly mentioned under Rules 27 and 28. It is true that for imposition of penalty like imprisonment and imposition of fine, only court can take action on a complaint duly filed and it is the power of the court to impose imprisonment or fine under Section 20 of the Act. For that seizure of the vehicle is not necessary. Hence, vehicles which are transporting sand illegally can be seized under Section 23 of the Act and not under under Section 102 of Cr.P.C. The

power to seize is given to revenue officials and Police officers and when vehicles are seized under Section 23 of the Act, the procedure to be followed is also prescribed in the statutory rules framed under the Act itself. It is a self contained Act. Further, under which circumstances police officers should seize the vehicles is specifically mentioned in Section 102 Cr.P.C. and conditions are different with regard to seizure of vehicle involved in illegal sand mining which is made illegal by the provisions of the Act and, therefore, Section 102 Cr.P.C. is not applicable when the vehicle is seized as per the provisions of the Act. Hence, the decision in **Rahim** v. **State of Kerala** (2002(3) KLT 340) is not correctly decided. As soon as the seizure is effected, further procedures to be taken are very specifically mentioned in Rules 27 and 28. The above power is in addition to the power of the court in imposing penalty under Section 20 and such offence can be taken cognizance by the court only if authorised officer as mentioned in Section 25 files a complaint and those two provisions are clearly independent as legislature thought it fit, if necessary to confiscate the vehicle if the vehicle is involved in illegal sand mining. Even though District Collector has got power to confiscate the vehicle, rules provide that on payment of the amount as fixed under Rule 27(3), he is bound to release the vehicle and sale can be made only if the amount is not paid within a reasonable time fixed

by the Collector. Hence, it is a limited power of confiscation.

7. With regard to W.P.(C)No.9958 of 2007, it is submitted that when the vehicle was released and given interim custody by the Magistrate's Court, Rs.25,000/= was already paid and receipt was also produced. Therefore, the petitioner in that case need only pay the balance amount in compliance with Ext.P6. Since the matter was pending, we give three weeks further time from today for payment of balance amount. In W.P.(C)No.9141 of 2001, amount directed to be paid under Rule 27(3) is only Rs.25,000/=. It is stated that, that was paid as per the directions of the Magistrate's Court while releasing the vehicle. That can be adjusted and further proceedings for confiscation has to be dropped and vehicle should be released. In Crl.M.C.No.1161 of 2007, a contention was raised saying that there was valid pass. The Collector after hearing found that, that is not corresponding to the sand which was mined and transported, but, allowed the petitioner to get release of the vehicle on payment of Rs.35,000/=. It is also stated that Rs.25,000/= was already deposited for the interim release of the vehicle as per the directions of the criminal court. In the above circumstances, the above can be adjusted towards releasing the vehicle and balance amount need be deposited by the petitioner and it should be deposited within one

month from today. Amount deposited before the Magistrate's Court shall be released to the Collector to be credited to the River Management Fund as provided under Rule 28(3). No further confiscation proceedings need be done.

In the result, we overrule the decision reported in 2005 (4) KLT 335 and follow the Division Bench decision of this court in M.F.A.No.1330 of 2002. All petitions are disposed of accordingly.

**J.B.KOSHY**
**JUDGE**

**K.HEMA**
**JUDGE**

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